

FILED

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

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CLERK, U.S. DISTRICT COURT
WESTERN DISTRICT OF TEXAS

BY

DEPUTY CLERK

YETI Coolers, LLC,

Plaintiff,

v.

Mercatalyst, Inc., and
TerraCycle US, LLC,

Defendants.

Case No. _____

1:22CV01337 RP

COMPLAINT FOR DAMAGES AND
INJUNCTIVE RELIEF FOR:

- (1) TRADEMARK INFRINGEMENT
- (2) UNFAIR COMPETITION, FALSE
ENDORSEMENT, FALSE
ASSOCIATION, AND FALSE
DESIGNATION OF ORIGIN
- (3) TRADEMARK DILUTION
- (4) FALSE ADVERTISING
- (5) UNFAIR COMPETITION (COMMON
LAW)
- (6) CONVERSION (COMMON LAW)
- (7) FRAUD

Jury Trial Demanded

COMPLAINT

Plaintiff YETI Coolers, LLC ("YETI") alleges the following facts in support of the claims stated herein against Defendants Mercatalyst, Inc. and TerraCycle US, LLC:

SUMMARY OF ACTION

1. This action arises out of the unlawful procurement, possession, resale and distribution of products bearing the federally registered and famous YETI trademark.

2. In 2021, YETI considered adding outerwear to its product line. As part of that process YETI obtained thousands of YETI-branded down feather jackets. But after it obtained these products and conducted further testing and analysis, YETI decided not to take the jackets to market. As a result, YETI shipped them to be destroyed and recycled by Defendant TerraCycle US, LLC (“TerraCycle”). TerraCycle confirmed that all the jackets had in fact been destroyed, and even sent a “certificate of destruction” to YETI confirming that the destruction had occurred. The certificate of destruction was false. Instead of being recycled, and unbeknownst to YETI, more than one thousand of these YETI-branded jackets wound up in the possession of Defendant Mercatalyst, Inc. (“Mercatalyst”), which proceeded to market and sell them under the YETI brand and the false pretense that it “worked directly with YETI” to purchase the inventory for resale to the public at deeply discounted prices.

3. In fact, YETI had determined that these goods were specifically not to be released to the market by any party, and YETI has never authorized their resale or distribution. Indeed, these items have never been sold anywhere because they are not even part of YETI’s released product line. Mercatalyst somehow acquired them (without YETI’s knowledge) after they were shipped off to be recycled by TerraCycle.

4. Now, Mercatalyst is seeking to profit from YETI’s valuable trademarks by selling and shipping these unreleased YETI-branded items to customers across the United States without YETI’s permission. And Mercatalyst continues to do so despite being notified by YETI of the stolen origin of these goods.

5. Defendants’ unlawful actions have caused and will continue to cause YETI significant harm, including but not limited to the loss of control of YETI’s trademarks, damage to the YETI brand, disruption to YETI’s carefully planned distribution process, loss of goodwill, loss

of customers, lost sales and confusion in the marketplace. YETI seeks immediate injunctive relief to stop the illegal and unauthorized sale and distribution of these products.

PARTIES

6. Plaintiff YETI Coolers, LLC (“YETI”) is a Delaware limited liability company with its principal place of business in Austin, Texas.

7. Defendant Mercatalyst, Inc. is a Delaware corporation with its primary place of business at 4717 Plano Parkway, Suite 130, Carrollton, Texas 75010-5006. Mercatalyst may be served via its Registered Agent: Derek Chapin, 3200 Belmeade Drive, Suite 100, Carrollton, Texas 75006.

8. Defendant TerraCycle US, LLC is a Delaware limited liability company with its primary place of business at 1 TerraCycle Way, Trenton, New Jersey 08638. TerraCycle may be served via its Registered Agent: TerraCycle, Inc., 121 New York Ave. Trenton, New Jersey 08638-5201.

JURISDICTION AND VENUE

9. YETI’s claims for trademark infringement, unfair competition, false association, false endorsement, false designation of origin, trademark dilution, and false advertising, as asserted in Claims 1 through 4 below, arise under the Trademark Act of 1946 (as amended; the “Lanham Act”), 15 U.S.C. §§ 1051, *et seq.* Accordingly, this Court has subject matter jurisdiction over those claims pursuant to 28 U.S.C. §§ 1331, 1338(a) & (b), and 15 U.S.C § 1121(a).

10. The Court has supplemental jurisdiction over the state law claims alleged in this Complaint pursuant to 28 U.S.C. § 1367.

11. This Court has personal jurisdiction over Defendant Mercatalyst because it is purposefully and intentionally availing itself of the privileges of doing business in the State of

Texas, including in this District. Among other things, (i) Mercatalyst has advertised, marketed, promoted, offered for sale, sold, and/or distributed, and continues to advertise, market, promote, offer for sale, sell, and/or distribute, infringing products to customers and/or potential customers, including in this District through its web site; (ii) Mercatalyst's tortious acts giving rise to this lawsuit and harm to YETI have occurred and are occurring in the State of Texas, including in this District; (iii) on information and belief, Mercatalyst acted with knowledge that its unauthorized use of YETI's rights would cause harm to YETI in the State of Texas and in this District; and (iv) Mercatalyst's customers and/or potential customers reside in the State of Texas, including in this District.

12. This Court has personal jurisdiction over Defendant TerraCycle because it is purposefully and intentionally availing itself of the privileges of doing business in the State of Texas, including in this District. Among other things, (i) TerraCycle's tortious acts giving rise to this lawsuit and harm to YETI have occurred in part in the State of Texas; and (ii) on information and belief, TerraCycle made fraudulent representations to YETI knowing they were false or made the representations recklessly and without knowledge of their truth knowing it would cause harm to YETI in the State of Texas and in this District.

13. Venue is proper in this Court pursuant to 28 U.S.C. § 1391 since Mercatalyst, upon information and belief, is engaged in infringing activities and causing harm within this District by advertising, offering to sell, selling, and/or shipping infringing products to customers and/or potential customers residing here.

FACTUAL ALLEGATIONS

I. YETI's Intellectual Property

14. YETI is, and for years has been, a leading manufacturer, designer, and developer of innovative products, including portable coolers, drinkware, bags, and apparel in the

United States. YETI has continuously engaged in the design, development, manufacture, promotion, distribution, and sale in interstate commerce, throughout the United States, including within this District, a variety of high-quality goods, including YETI's portable coolers, drinkware, bags, apparel, and other products, using multiple common law and federally registered trademarks.

15. As is relevant for this action, YETI is the owner of all rights in and to the following trademarks, which are valid and registered on the Principal Register of the United States Patent and Trademark Office (collectively, the "YETI Marks"): Registration No. 4,948,371; Registration No. 5,601,737; Registration No. 6,489,205.

16. The YETI Marks are used in connection with the manufacture and distribution of high-quality goods in the categories identified above. True and correct copies of the Certificates of Registration for the YETI Marks are attached hereto as Exhibit A.

17. The YETI Marks are symbols of YETI's origin, quality, reputation, and enormous goodwill. They have never been abandoned. The YETI Marks have been extensively and continuously used in interstate commerce to identify and distinguish YETI's high-quality goods for an extended period, and long prior to Mercatalyst's use described below.

18. YETI extensively uses, advertises, and promotes the YETI Marks in the United States in association with the sale of high-quality goods. YETI expends enormous resources promoting the YETI Marks and products bearing and/or using the YETI Marks in magazines, newspapers, billboards, television ads, and on the Internet, including pre-roll, social media, banner ads, page takeovers, and the official YETI website, www.yeti.com, through sponsorship of tradeshow, outdoor sporting events, and numerous sponsored ambassadors.

19. As a result of YETI's efforts, members of the consuming public readily identify merchandise bearing or sold using the YETI Marks as being high-quality merchandise sponsored and approved by YETI.

20. Accordingly, the YETI Marks are widely recognized trademarks in the United States, and the trademarks have achieved substantial secondary meaning among consumers as identifiers of high-quality goods.

21. YETI has carefully monitored and policed the use of the YETI Marks and has never assigned or licensed the YETI Marks to Defendants.

II. YETI Hires TerraCycle to Recycle the Unreleased Goods, and TerraCycle Falsely Certifies their Destruction

22. In early 2021, YETI was in possession of thousands of certain YETI-branded apparel products, including men's and women's down-feather outerwear jackets bearing the YETI Marks (herein, the "Unreleased Goods").

23. The Unreleased Goods had not previously been released by YETI for sale to the public. YETI ultimately determined that these items were not suitable for release to the market.

24. Accordingly, YETI took steps to have them destroyed and recycled into raw materials for alternative use. On March 16, 2021, YETI entered into a Materials Recycling Program Agreement with TerraCycle for the sustainable destruction and recycling of the Unreleased Goods (the "Agreement").¹

¹ With the instant filing, YETI pursues only independent tort claims and a preliminary injunction against Defendant TerraCycle; however, YETI reserves the right to pursue claims for breach of contract against TerraCycle in accordance with the dispute resolution clause of the Agreement.

25. In June 2021, TerraCycle instructed YETI to ship the Unreleased Goods to TerraCycle's subcontractor, Akshar Plastic, Inc., at its recycling facility in Bloomington, Illinois.

26. On July 9, 2021, YETI shipped the entire inventory of the Unreleased Goods to Akshar Plastic, at TerraCycle's request. In total, YETI shipped 27 pallets with a gross weight of 8,725 pounds and a net weight of 8,185 pounds. A true and correct copy of the Packing List is attached hereto as Exhibit B.

27. On July 12, 2021, Akshar Plastic confirmed receipt of the Unreleased Goods YETI had shipped.

28. On July 21, 2021, TerraCycle invoiced YETI at its Dallas, Texas facility for recycling *all* of the Unreleased Goods YETI had shipped, totaling 8,185 pounds of YETI-branded products. A true and correct copy of the Invoice is attached hereto as Exhibit C.

29. TerraCycle later sent a Certificate of Destruction to YETI's Dallas facility, confirming the entire inventory of Unreleased Goods shipped to Akshar Plastic had been successfully destroyed and recycled as per YETI's instructions. A true and correct copy of the Certificate is attached hereto as Exhibit D. Specifically, the Certificate of Destruction identified 27 pallets of YETI jackets at a net weight of 8,185 pounds that were shipped to TerraCycle at the Akshar Plastic facility, and expressly guaranteed that the material "has been received and has been destroyed." *Id.*

30. YETI shipped the Unreleased Goods to TerraCycle's subcontractor, Akshar Plastic, solely for the purpose of destruction and recycling. The Unreleased Goods have never been available for sale or sold by YETI in the United States or through any other channels authorized by YETI.

III. YETI Learns Mercatalyst Is Offering and Selling the Unreleased Goods

31. Mercatalyst owns and operates a retail store doing business as “Morning Save,” which maintains an e-commerce website at <http://www.morningsave.com>. On information and belief, Mercatalyst also owns and operates a “Morning Save” brick-and-mortar store located in Plano, Texas.

32. On or around November 21, 2022, YETI learned that Mercatalyst was engaging in the unauthorized sale, offer for sale, marketing, and distribution of the Unreleased Goods on the Morning Save website.

33. Specifically, the Unreleased Goods were available for sale and marketed as the “YETI Technical Lightweight Puffer Jacket” at the following URLs:

<https://morningsave.com/deals/yeti-men-s-technical-lightweight-puffer-jacket-1> and

<https://morningsave.com/deals/yeti-women-s-technical-lightweight-puffer-jacket-1>.

34. Below are images of the Unreleased Goods as they appeared on the foregoing webpages on November 21, 2022:



35. YETI also learned that the Unreleased Goods were presented by Mercatalyst or its agents on the Rachael Ray Show as featured holiday gifts. A true and correct copy of a screenshot of the transcript of this segment is attached as Exhibit E.

36. The television segment featured a discussion between host Rachael Ray and Jenn Falik, described as Morning Save's "brand ambassador + style expert." During the segment, Ms. Falik introduced viewers to the YETI-branded jackets shown above and indicated that they are exclusively available for sale at Morning Save. Ms. Falik also indicated that YETI approved of their resale, stating:

"Yeah, so this deal by the way, is exclusive to Morning Save because they worked directly with YETI to buy up all the remaining inventory. So you will not see this deal anywhere else."

37. This statement is false, as YETI did not work with Mercatalyst, Morning Save, or any other person regarding the sale of the Unreleased Goods, and it has never authorized their resale by any party.

38. On November 21, 2022, YETI conducted a controlled purchase of a "YETI Men's Technical Lightweight Puffer Jacket" and a "YETI Women's Technical Lightweight Puffer Jacket" from Morningsave.com. According to the UPS tracking information, these products shipped from Carrollton, Texas on November 22, 2022, and November 23, 2022, respectively.

39. On November 23, 2022, YETI made two more controlled purchases, which according to UPS tracking information were both shipped from Carrollton, Texas on December 1, 2022.

40. After inspecting the items purchased from Mercatalyst, YETI confirmed that the products being offered for sale by Morning Save are the Unreleased Goods that YETI

previously shipped to TerraCycle for destruction and the materials recycled in July 2021, and which TerraCycle falsely represented had been destroyed.

IV. YETI Asks Mercatalyst to Cease and Desist Selling the Unreleased Goods

41. On November 21, 2022, outside counsel for YETI contacted Mercatalyst via email notifying it that the products offered for sale were stolen and requested that Mercatalyst immediately cease and desist from marketing, selling, or shipping the products.² A true and correct copy of that correspondence is attached as Exhibit F.

42. Between November 21, 2022, and November 23, 2022, YETI and Mercatalyst continued to exchange a series of emails, wherein YETI reiterated to Mercatalyst that the Unreleased Goods had never been offered for sale to anyone by YETI, and that YETI believed those goods were stolen. YETI and Mercatalyst were unable to reach a resolution and Morningsave.com continued to offer the Unreleased Goods for sale on its website.

43. On November 23, 2022, YETI filed a police report in Carrollton, Texas reporting the apparent theft of the Unreleased Goods. The Police Report number is 2022402525.

44. On November 25, 2022, YETI received an email from Morningsave.com stating that the listings and the Rachael Ray Show YouTube post would be pulled down, but ignoring YETI's request that the remaining inventory be isolated or that Mercatalyst provide their supply source for the YETI-branded products.

45. Mercatalyst continued to sell and ship the Unreleased Goods after receiving notice from YETI that the products were stolen and requesting the immediate cessation of selling and shipping the Unreleased Goods.

² YETI's counsel's initial correspondence was addressed to "A Mediocre Corporation." Based on the subsequent correspondence from Mr. Chapin, it appears that this was the former name of Mercatalyst, which is now Mercatalyst Inc.

46. On December 19, 2022, YETI representatives again contacted the Mercatalyst CEO to confirm that Mercatalyst would provide a complete inventory of all remaining jackets and either return the jackets to YETI or send them to a YETI-approved third party for destruction at Mercatalyst's expense. As of the date of filing, YETI has received no response.

V. Defendants' Unlawful Conduct Is Irreparably Harming YETI's Brand

47. At all times relevant hereto, Mercatalyst has had full knowledge of YETI's ownership of the YETI Marks, including its exclusive right to use and license such intellectual property and the goodwill associated therewith.

48. Mercatalyst's use of the YETI Marks, including its promotion and advertisement, reproduction, distribution, sale and offering for sale of the Unreleased Goods, is without YETI's consent or authorization.

49. Through Mercatalyst's unlawful actions, the quality control measures structured and effectuated by YETI to maintain control over its distribution channels and brand image in the minds of consumers that it has worked tirelessly to maintain have been circumvented and disrupted.

50. The goods offered for sale by Mercatalyst bearing the YETI Marks are not genuine YETI products, as they were never authorized for distribution in the marketplace by YETI. In selling the Unreleased Goods without authorization, Mercatalyst is debasing the YETI brand and damaging the reputation and goodwill associated with its long-standing and famous marks.

51. Additionally, the Unreleased Goods being sold by Mercatalyst are of a quality substantially different than that of YETI's genuine goods. Defendant is actively using, promoting and otherwise advertising, distributing, selling and/or offering for sale substantial quantities of these products with the knowledge and intent that such goods will be mistaken for

the genuine high-quality goods offered for sale by YETI, despite Mercatalyst's knowledge that they are without authority to use the YETI Marks.

52. The net effect of Mercatalyst's actions is likely to cause confusion of consumers, at the time of initial interest, sale, and in the post-sale setting, who will believe the YETI-branded goods offered for sale in or through Mercatalyst's website or elsewhere are genuine goods originating from, associated with, and approved by YETI. Moreover, Mercatalyst's wrongful conduct is likely to create a false impression and deceive customers, the public, and the trade into believing there is a connection or association between YETI's genuine goods and Mercatalyst and/or the Unreleased Goods, which there is not.

53. YETI is suffering irreparable injury and has suffered substantial damages because of Mercatalyst's unauthorized and wrongful use of the YETI Marks. It has no adequate remedy at law to redress these harms. If Mercatalyst's infringing and unfairly competitive activities are not enjoined by this Court, YETI and the consuming public will continue to be harmed.

CLAIMS FOR RELIEF

I. CLAIM ONE: TRADEMARK INFRINGEMENT – 15 U.S.C. § 1114 (Against Mercatalyst)

54. Plaintiff hereby incorporates the allegations contained in all preceding paragraphs as if fully set forth herein.

55. Defendant Mercatalyst is using YETI's trademark in connection with the sale of goods without YETI's authorization and with the specific intent to cause consumers and others in the trade to believe they are purchasing genuine YETI goods when in reality they are purchasing products that YETI intended to destroy through recycling.

56. Defendant Mercatalyst's unauthorized use of the YETI mark is likely to cause confusion, or to cause mistake, or to deceive or to cause those encountering products sold by Mercatalyst to believe that the same goods originate from or are in some manner, endorsed, sponsored, or approved by YETI in violation of the Lanham Act.

57. Defendant Mercatalyst's wrongful conduct has deprived YETI of, among other things, the right to control the reputation and goodwill associated with its trademark. Defendant's conduct is, in all instances, willful and outrageous.

58. Unless Defendant is enjoined from engaging in its wrongful conduct, YETI will suffer further irreparable injury and harm, including to its goodwill and reputation, for which it has no adequate remedy of law. It will further suffer other economic losses.

II. CLAIM TWO: UNFAIR COMPETITION, FALSE ENDORSEMENT, FALSE ASSOCIATION, AND FALSE DESIGNATION OF ORIGIN – 15 U.S.C. § 1125(a)(1)(A) (Against Mercatalyst)

59. Plaintiff hereby incorporates the allegations contained in all preceding paragraphs as if fully set forth herein.

60. The YETI mark has acquired substantial goodwill and secondary meaning.

61. Mercatalyst's unauthorized use of the mark to sell the Unreleased Goods constitutes a false designation of origin and a false or misleading representation of fact, which is likely to cause confusion and/or mistake and is likely to deceive customers and potential customers as to the source, origin, sponsorship, and affiliation of the goods sold by Defendant.

62. Mercatalyst's unauthorized use of the YETI mark constitutes Unfair Competition, False Endorsement, False Association, and False Designation of Origin pursuant to 15 U.S.C. § 1125(a).

63. As a result of Mercatalyst's unlawful conduct, YETI has suffered irreparable harm to its business, reputation, and goodwill. The foregoing acts of Mercatalyst have

caused, and without judicial intervention, will continue to cause YETI irreparable harm for which there is no adequate remedy at law. It will also further suffer other economic losses.

III. CLAIM THREE: TRADEMARK DILUTION – 15 U.S.C. § 1125(c) (Against Mercatalyst)

64. Plaintiff hereby incorporates the allegations contained in all preceding paragraphs as if fully set forth herein.

65. The YETI mark is inherently distinctive, has acquired substantial goodwill and secondary meaning, and is famous within the meaning of 15 U.S.C. § 1125(c).

66. Mercatalyst is distributing and/or selling products bearing the YETI Marks.

67. Upon information and belief, Mercatalyst acted with knowledge of the fame and reputation of YETI's trademarks with the purpose of usurping such rights and to willfully and intentionally confuse, mislead, and deceive members of the public.

68. Mercatalyst's actions have and are likely to continue to dilute, blur and tarnish the distinctive quality of the YETI Marks, and lessen the capacity of the YETI Marks to identify and distinguish the company's products.

69. Mercatalyst's acts constitute willful trademark dilution pursuant to 15 U.S.C. § 1125(c), and YETI has been, and is likely to continue to be, damaged by these acts.

70. Unless Mercatalyst is restrained, YETI will continue to suffer damages and injury to its reputation and goodwill. It will further suffer other economic losses.

IV. CLAIM FOUR: FALSE ADVERTISING – 15 U.S.C. § 1125(a) et seq. (Against Mercatalyst)

71. Plaintiff hereby incorporates the allegations contained in all preceding paragraphs as if fully set forth herein.

72. Mercatalyst's statements and representations published on its Morning Save Website and on television constitute commercial advertising and/or commercial promotion.

73. Mercatalyst was involved in interstate commerce because its Morning Save website was and is accessible nationwide, and out-of-state consumers did in fact purchase products from its website.

74. The statements on Mercatalyst's Morning Save website and on television contained false, misleading, and/or deceptive statements about the nature, characteristics, qualities, and/or geographic origin of the YETI Unreleased Goods.

75. Among these, Mercatalyst advertised, promoted, offered for sale, and sold YETI-branded products that were never intended to be released for sale to the public. Mercatalyst also made numerous other false representations about the YETI and the Unreleased Goods, including that Mercatalyst "worked directly with YETI to buy up" and resell the Unreleased Goods.

76. These false, misleading, and/or deceptive statements were, and will continue to be, material to consumers' purchasing decisions.

77. Mercatalyst's acts constitute willful false statements in connection with goods and/or services distributed in interstate commerce, in violation of section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

78. Mercatalyst's statement have directly and/or proximately caused and/or are likely to cause YETI to suffer irreparable diminution to the YETI brand and YETI Marks' reputation, fame, and goodwill.

79. YETI has suffered, and will continue to suffer, irreparable harm from Mercatalyst's acts and conduct complained of herein, unless restrained by law. It will further suffer other economic losses.

V. CLAIM FIVE: UNFAIR COMPETITION (COMMON LAW) (Against Mercatalyst)

80. Plaintiff hereby incorporates the allegations contained in all preceding paragraphs as if fully set forth herein.

81. Mercatalyst is using YETI's trademark in connection with the sale of goods without YETI's authorization and with the specific intent to cause consumers and others in the trade to believe they are purchasing genuine YETI goods when in reality they are purchasing products that YETI intended to destroy through recycling.

82. Mercatalyst's unauthorized use of the YETI mark is likely to cause confusion, or to cause mistake, or to deceive or to cause those encountering products sold by Mercatalyst to believe that the same goods originate from or are in some manner, endorsed, sponsored, or approved by YETI, which they are not.

83. Mercatalyst's wrongful conduct has deprived YETI of, among other things, the right to control the reputation and goodwill associated with its trademark. Mercatalyst's conduct is, in all instances, willful and outrageous.

84. Unless Mercatalyst is enjoined from engaging in its wrongful conduct, YETI will suffer further irreparable injury and harm, including to its goodwill and reputation, for which it has no adequate remedy of law. It will further suffer other economic losses.

VI. CLAIM SIX: CONVERSION (COMMON LAW) (Against All Defendants)

85. Plaintiff hereby incorporates the allegations contained in all preceding paragraphs as if fully set forth herein.

86. YETI owns and has never authorized the sale of the Unreleased Goods by any entity, including Mercatalyst or TerraCycle.

87. YETI performed several controlled purchases of the jackets offered for sale on Mercatalyst's website and have confirmed that those jackets are the Unreleased Goods.

88. Defendants unlawfully possessed and exercised control over the Unreleased Goods.

89. Defendants did not have YETI's consent to possess the Unreleased Goods, and the evidence suggests Defendants intended to deprive Plaintiff of that property permanently.

90. YETI has demanded the return of the Unreleased Goods.

91. Defendants have refused to return the Unreleased Goods.

VII. CLAIM SEVEN: FRAUD (Against TerraCycle)

92. Plaintiff hereby incorporates the allegations contained in all preceding paragraphs as if fully set forth herein.

93. TerraCycle represented to YETI in the Certificate of Destruction that all 27 pallets of Unreleased Goods "ha[d] been received and ha[d] been destroyed" on July 12, 2021. *See Exhibit D.*

94. This representation was false; YETI has confirmed through its controlled purchase that the Unreleased Goods are being offered for sale by Mercatalyst.

95. When TerraCycle made the representation to YETI in the Certificate of Destruction, it did so either knowing that the representation was false, or it did so recklessly and without knowledge of its truth.

96. TerraCycle knew that YETI would rely, and YETI did in fact rely, on the Certificate of Destruction's accuracy. Had YETI known the Unreleased Goods were never destroyed as represented, it could have and would have taken immediate action to locate the items before Mercatalyst began marketing and selling them to the public.

97. TerraCycle made this representation in the Invoice that it mailed to YETI, with the knowledge and intent that YETI act upon the representation in paying for the destruction of all Unreleased Goods. *See* Exhibit C.

98. TerraCycle's false representation regarding the certified destruction of all Unreleased Goods has caused YETI injury because the Unreleased Goods have been subject to unauthorized marketing, sales, and distribution by Mercatalyst, as detailed above.

DEMAND FOR JURY TRIAL

99. YETI requests a trial by jury for all issues so triable pursuant to Fed. R. Civ. P. 38(b) and 38(c).

CONCLUSION AND PRAYER

WHEREFORE, based on Defendants' conduct complained of herein, YETI asks this Court to enter an Order and final judgment in YETI's favor on each Claim for Relief asserted herein:

- Temporarily, preliminarily and permanently enjoining Defendant Mercatalyst from use of the YETI trademark or of any mark confusingly similar to YETI's, including enjoining Defendant Mercatalyst from selling or distributing any Unreleased Goods within its possession or control;
- Preliminarily and permanently enjoining Defendant TerraCycle from selling or distributing any Unreleased Goods that may still be within its possession or control;
- Requiring Defendants to turn over all Unreleased Goods in their possession or control to Plaintiff;
- Issuing a seizure order to enforce the return of all Unreleased Goods to Plaintiff;
- Directing Defendant Mercatalyst to pay compensatory damages to Plaintiff in an amount to be proven at trial;
- Directing Defendant Mercatalyst to disgorge all payments wrongfully and unjustly received;

- Directing Defendant Mercatalyst to pay punitive damages in the maximum amount permitted by law;
- Directing Defendant Mercatalyst to pay statutory damages for trademark infringement and dilution in the maximum amount permitted under the federal Lanham Act;
- Directing Defendant Mercatalyst to pay costs, attorney fees, prejudgment and post judgment interest and attorney's fees for violations of the federal Lanham Act and Texas law;
- Directing Defendant Mercatalyst to pay treble damages and its profits for violation of the federal Lanham Act;
- Actual damages as allowed by law;
- Attorneys' fees and costs as allowed by statute;
- Pre-judgment and Post-judgment interest as allowed by law; and
- Such further relief as the Court may deem just and equitable.

Date: December 21, 2022

Respectfully submitted,

SHEARMAN & STERLING LLP



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EXHIBIT A



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YETI

Word Mark YETI**Goods and Services** IC 025. US 022 039. G & S: Clothing, namely, t-shirts, jerseys, shorts, hats, caps, sweatshirts, socks, jackets. FIRST USE: 19860101. FIRST USE IN COMMERCE: 19870430**Standard Characters Claimed****Mark Drawing Code** (4) STANDARD CHARACTER MARK**Serial Number** 78975433**Filing Date** January 24, 2005**Current Basis** 1A**Original Filing Basis** 1A**Published for Opposition** August 14, 2007**Registration Number** 4948371**Registration Date** October 30, 2007**Owner** (REGISTRANT) Yeti Cycling, LLC LIMITED LIABILITY COMPANY DELAWARE 621 Corporate Circle, Unit B Golden COLORADO 80401

(LAST LISTED OWNER) YETI COOLERS, LLC LIMITED LIABILITY COMPANY DELAWARE 7601 Southwest Pkwy Austin TEXAS 78735

Assignment Recorded ASSIGNMENT RECORDED**Attorney of Record** Joseph J. Berghammer**Type of Mark** TRADEMARK**Register** PRINCIPAL**Affidavit Text** SECT 15. SECT 8 (6-YR). SECTION 8(10-YR) 20170810.**Renewal** 1ST RENEWAL 20170810**Live/Dead Indicator** LIVE
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YETI

Word Mark	YETI
Goods and Services	IC 025. US 022 039. G & S: shirts; t-shirts; hats; sun shirts; caps; sweatshirts; hooded sweatshirts; shorts; vests. FIRST USE: 20070125. FIRST USE IN COMMERCE: 20070125
Mark Drawing Code	(5) WORDS, LETTERS, AND/OR NUMBERS IN STYLIZED FORM
Serial Number	86984120
Filing Date	March 4, 2016
Current Basis	1A
Original Filing Basis	1B
Published for Opposition	December 20, 2016
Registration Number	5601737
Registration Date	November 6, 2018
Owner	(REGISTRANT) YETI COOLERS, LLC LIMITED LIABILITY COMPANY DELAWARE 7601 Southwest Pkwy Austin TEXAS 78735
Assignment Recorded	ASSIGNMENT RECORDED
Attorney of Record	Joseph J. Berghammer
Prior Registrations	3203869;4818317;4833419
Description of Mark	Color is not claimed as a feature of the mark. The mark consists of the word "YETI" in stylized font.
Type of Mark	TRADEMARK
Register	PRINCIPAL
Live/Dead Indicator	LIVE



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 List At: to record:

Record 3 out of 3

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YETI

Word Mark YETI

Goods and Services

IC 035. US 100 101 102. G & S: online retail store services featuring household goods and accessories; online retail store services featuring camping goods and accessories; online retail store services featuring fishing goods and accessories; online retail store services featuring hunting goods and accessories; online retail store services featuring backyard goods being outdoor goods and accessories; online retail store services featuring cookout goods and accessories; online retail store services featuring hiking goods and accessories; online retail store services featuring travel goods and accessories; online retail store services featuring food and beverage goods and accessories; online retail store services featuring pet goods and accessories, online retail store services featuring portable cooler goods and accessories; online retail store services featuring beverageware goods and accessories; online retail store services featuring clothing and apparel goods and accessories; online retail store services featuring insulating goods and accessories; online retail store services featuring storage goods and accessories; online retail store services featuring bag goods, being bags, luggage and straps for bags and luggage; online retail store services featuring waterproof bags and luggage; online retail store services featuring insulated bag goods, being insulated bags for food and beverage; online retail store services featuring cargo containers and organizing inserts for cargo containers; online retail store services featuring container goods and container accessories; online retail store services featuring buckets, bucket lids, and bucket organizing inserts; online retail store services featuring furniture and furniture accessories; online retail store services featuring blankets and blanket accessories; online retail store services featuring stickers, patches, and decals goods and accessories; online retail store services featuring portable coolers, beverageware, portable cooler accessories, beverageware accessories, insulated bags, containers, storage boxes, buckets, pet products, furniture, bags, reusable ice packs, clothing and apparel, blankets, and cargo containers; online retail store services featuring a wide variety of consumer goods of others; retail store services featuring household goods and accessories; retail store services featuring camping goods and accessories; retail store services featuring fishing goods and accessories; retail store services featuring hunting goods and accessories; retail store services featuring backyard goods being outdoor goods and accessories; retail store services featuring cookout goods and accessories; retail store services featuring hiking goods and accessories; retail store services featuring travel goods and accessories; retail store services featuring food and beverage goods and accessories; retail store services featuring pet goods and accessories, being pet beds, pet blankets, pet leashes, pet dishes, and pet bowls; retail store services featuring portable cooler goods and accessories; retail store services featuring beverageware goods and accessories; retail store services featuring clothing and apparel goods and accessories; retail store services featuring insulating goods and accessories; retail store services featuring storage goods and

accessories; retail store services featuring bag goods, being bags, luggage and straps for bags and luggage retail store services featuring waterproof bags and luggage; retail store services featuring insulated bag goods, being insulated bags for food and beverage; retail store services featuring cargo containers and organizing inserts for cargo containers; retail store services featuring container goods and container accessories; retail store services featuring buckets, bucket lids, and bucket organizing inserts; retail store services featuring furniture and furniture accessories; retail store services featuring blankets and blanket accessories; retail store services featuring stickers, patches, and decals goods and accessories; retail store services featuring portable coolers, beverageware, portable cooler accessories, beverageware accessories, insulated bags, containers, storage boxes, buckets, pet products, furniture, bags, reusable ice packs, clothing and apparel, blankets, and cargo containers; retail store services featuring a wide variety of consumer goods of others; online retail stores featuring, outdoor dinnerware, outdoor serving ware, outdoor storage, outdoor food storage, and outdoor fire pits; retail stores featuring, outdoor dinnerware, outdoor serving ware, outdoor storage, outdoor food storage, and outdoor fire pits. FIRST USE: 20070600. FIRST USE IN COMMERCE: 20070600

**Standard
Characters
Claimed**

**Mark
Drawing
Code**

(4) STANDARD CHARACTER MARK

**Serial
Number**

88960611

Filing Date

June 11, 2020

**Current
Basis**

1A

**Original
Filing Basis**

1A

**Published for
Opposition**

July 6, 2021

**Registration
Number**

6489205

**Registration
Date**

September 21, 2021

Owner

(REGISTRANT) YETI COOLERS, LLC LIMITED LIABILITY COMPANY DELAWARE 7601 Southwest Pkwy Austin TEXAS 78735

**Attorney of
Record**

Joseph J. Berghammer

**Prior
Registrations**

3203869;5718663;6042747

Type of Mark

SERVICE MARK

Register

PRINCIPAL

**Live/Dead
Indicator**

LIVE

TESS HOME	NEW USER	STRUCTURED	FREE FORM	BROWSE DICT	SEARCH OG	TOP	HELP	PREV LIST	CURR LIST	NEXT LIST
FIRST DOC	PREV DOC	NEXT DOC	LAST DOC							

EXHIBIT B

PACKING LIST											
AKSHAR PLASTIC INC 1100 BELL ST BLOOMINGTON, IL 61701						PH: 1-309-807-2222 Fax: 1-309-820-9366 www.aksharplastic.com					
Company		Terracycle				Date		7/12/2021			
Material Type 1		Yeti Jackets				BOL		2039601192			
Material Type 2						Container #					
Material Type 3						Truck #					
Material Type 4						Inbound		1:30		Outbound 3:30	
No	Item	Gross	Tare	Net	Price/USD	No	Item	Gross	Tare		Price/USD
1	Yeti Jackets	282	20	262	1 Box	31					
2		304	20	284	1 Box	32					
3		322	20	302	1 Box	33					
4		266	20	246	1 Box	34					
5		326	20	306	1 Box	35					
6		320	20	300	1 Box	36					
7		338	20	318	1 Box	37					
8		344	20	324	1 Box	38					
9		306	20	286	1 Box	39					
10		288	20	268	1 Box	40					
11		292	20	272	1 Box	41					
12		314	20	294	1 Box	42					
13		304	20	284	1 Box	43					
14		361	20	341	1 Box	44					
15		358	20	338	1 Box	45					
16		372	20	352	1 Box	46					
17		360	20	340	1 Box	47					
18		334	20	314	1 Box	48					
19		288	20	268	1 Box	49					
20		322	20	302	1 Box	50					
21		347	20	327	1 Box	51					
22		361	20	341	1 Box	52					
23		316	20	296	1 Box	53					
24		318	20	298	1 Box	54					
25		288	20	268	1 Box	55					
26		332	20	312	1 Box	56					
27		362	20	342	1 Box	57					
28						58					
29						59					
30						60					
								8,725	540	8,185	

EXHIBIT C



TerraCycle US, LLC
121 New York Avenue
Trenton, NJ 08638
Phone 609-393-4252
Fax 609-393-4259
www.TerraCycle.com

Invoice

Original

Number	Date	Page
51667	07/21/21	1
Due Date		
08/20/21		

Bill To:

Yeti Coolers, LLC

4040 Pipestone Rd.
Dallas, TX 75212
US

Ship To:

1100 E. Bell St.
Bloomington, IL 61701

Customer ID		Purchase Order			Salesperson	
C01244					Dylan Layfield	
Ship Via	FOB	Contact	Terms	Currency		
			Net 30	US Dollars		
QUANTITY	ITEM NUMBER	DESCRIPTION	PRICE	U/M	AMOUNT	
8,185.000	➡ 515-1001	<p>Shipped 7/9/2021 - Rec'd at Akshar on 7/12/2021 - BOL # 2039601192 Recycling Services_lb - Yeti Bags</p> <p>Please submit electronic payment to TerraCycle US LLC.</p> <p>Bank Name: Bank of America Bank Address: 100 W 33rd Street, New York NY 10001 Account No.: 381034386011 ACH Routing No.: 021200339 Wire Routing No.: 026009593 SWIFT Code: BOFAUS3N</p>	\$ 0.85	Eaches	\$ 6,957.25	
Merchandise	Discount	Freight	Tax	Applied	Total Due	
\$ 6,957.25	\$ 0.00	\$ 0.00	\$ 0.00	\$ 0.00	\$ 6,957.25	
					US Dollars	
Customer Fax #:						
Invoice Submission Info:						
Please send invoice to Jacob Perry <Jacob.Perry@yeti.com> and CC dylan.layfield@terracycle.com						

EXHIBIT D

TerraCycle US, LLC

121 New York Avenue
 Trenton, NJ 08638
 Phone 609-393-4252
 Fax 609-393-4259
 www.TerraCycle.com

**Certificate of Destruction**

The following number must appear on all related correspondence, shipping papers, and invoices:

COD Number: 216099

Based on BOL # 2039601192

TerraCycle will deface, shred and properly recycle or destroy all material and will not re-use as consumer products in any way. This certificate guarantee to all parties participating in the above-mentioned recycling program that such material (Bags, Coolers, Textiles) has been received and has been destroyed via grinding, shredding, and other recycling processes or procedures.

Received Date

7.12.2021

Requisitioner Name

Dylan Layfield

Terms

Net 30

Pallets Unloaded

27

To:

YETI
 4040 Pipestone Road
 Dallas, TX 75212

Payable To:**Ship To:**

TerraCycle
 1100 E Bell St.
 Bloomington, IL. 61701

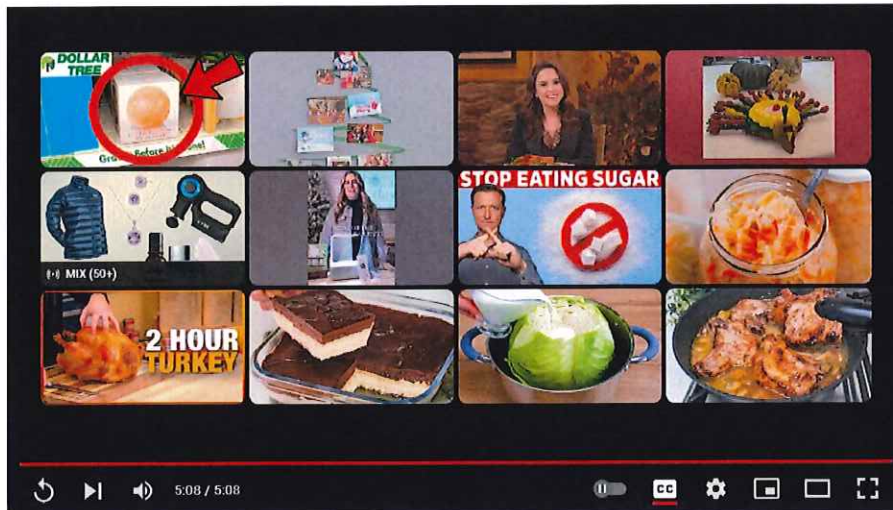
ITEM NUMBER	NET WEIGHT LBS	GROSS WEIGHT LBS	DESCRIPTION
301-8501	8,185lbs.		27 pallets of YETI Jackets

All materials must meet TerraCycle's minimum requirements: they must be properly staged and palletized for shipping, and must have no food content or other residue (<1%).

EXHIBIT E

Page 1

New Deals For Holiday Gifts! Down Jacket + More—Between 54% and 85% Off! - YouTube
<https://www.youtube.com/watch?v=RGGq1ro9qbQ>



#Ad

New Deals For Holiday Gifts! Down Jacket + More—Between 54% and 85% Off!



Rachael Ray Show
812K subscribers

Subscribe

12



Share

Save



1,287 views Nov 21, 2022

We may receive commissions from some links to products on this page. Promotions are subject to availability and retailer terms.

Thanks to MorningSave brand ambassador + style expert Jenn Falik, you'll still be getting unbeatable bargains on all your gifts this season, while supplies last—even if you start shopping before Black Friday. We have everything from a pendant and earring set and down jacket to a deep tissue massager and skincare product duo, so there's truly no reason to wait to start shopping.

Shop these amazing deals on quality items, while supplies last, on MorningSave.com. <https://morningsave.com/events/cravin...>

YETI Down Jackets: <https://bit.ly/3GxGC9s>

VYBE X Deep Tissue Percussion Massager: <https://bit.ly/3Emmu7r>

Dr. Brandt "Needles No More" Smoothing & Sculpting Duo with Gua Sha: <https://bit.ly/3hQQM12>

Savvy Cle Genuine Gemstone Pendant and Earring Set: <https://bit.ly/3XfY1JJ>

#Ad

Show less

3 Comments Sort by



Add a comment...



Allen Trice 2 days ago

Another great holiday gifts for Rachael Ray! 🇺🇸 🇩🇪 🇫🇷

1



Reply

Transcript

- 1:09 And you can feel the goose down it.
- 1:10 Yeah, so this deal by the way,
- 1:12 is exclusive to Morning Save
- 1:13 because they worked directly with YETI
- 1:16 to buy up all the remaining inventory.
- 1:18 So you will not see this deal anywhere else.
- 1:21 The manufacturer suggested retail price on these is \$300
- 1:25 for this jacket.
- 1:26 But we've got it for just \$99.99.

English - en



10 Things You SHOULD Be Buying at Dollar Tree in...

The Deal Guy
1M views · 3 weeks ago



Mix - Rachael Ray Show
More from this channel for you



Rach's Secret For Cooking Your Turkey in Only TWO Hours |...

Rachael Ray Show
85K views · 5 years ago



DIY Tree Alternative For Pet Owners + Small Space

Rachael Ray Show
424 views · 5 days ago
New



GIFTS FOR THE IN LAWS | HAPPY HOLLAND DAYS

Holland Paterno
27 views · 13 days ago



This is the best thing I've ever eaten! Dessert in 5 minutes, n...

Bestes Essen hier
2.6M views · 3 weeks ago



Lacey Chabert Talks Iconic "Mean Girls" Line

Rachael Ray Show
981 views · 1 day ago
New

EXHIBIT F

Portnoy, Erica Brand

From: Portnoy, Erica Brand
Sent: Monday, November 21, 2022 2:12 PM
To: 'copyright@mediocre.com'; 'admin@mediocre.com'; 'legal@mediocre.com'
Subject: Request for Cooperation: Unlawfully Procured Product Sold on Morningsave.com
Attachments: YETI Coolers LLC Ltr to A Mediocre Corporation 11.21.2022.pdf

To Whom It May Concern:

Attached please find a letter on behalf of my client YETI Coolers LLC. The text of the letter is reproduced below for your convenience.

I look forward to receiving your prompt response.

Best regards,

Erica Brand Portnoy

VIA E-MAIL

A Mediocre Corporation
copyright@mediocre.com
admin@mediocre.com
legal@mediocre.com

Re: Request for Cooperation: Unlawfully Procured Product Sold on Morningsave.com

Dear A Mediocre Corporation:

I am contacting you with an urgent request on behalf of my client YETI Coolers LLC ("YETI"). **Please contact me immediately to discuss this matter.** I can be reached at (415) 283-5764 or eportnoy@sideman.com.

YETI identified that Morningsave.com (operated by A Mediocre Corporation) offered for sale and sold "YETI"-branded products that have been unlawfully procured. Specifically, the "YETI"-branded products listed below have never been sold, and YETI has a good faith belief that the products were stolen or diverted without authorization while in transit.

YETI requests your immediate cooperation in this matter, including taking the following actions:

- Promptly remove all listings, advertising, and offers for the "YETI"-branded listings below;
- Quarantine all of the products that currently remain in Morningsave.com's inventory, including but not limited to outstanding orders, and identify the current quantity on-hand;
- Please contact me immediately to provide the source of where Morningsave.com procured the "YETI" products.

The following listings on Morningsave.com feature "YETI"-branded products that have never been sold:

<https://morningsave.com/deals/yeti-crossroads-16l-tote-bag-17>
<https://morningsave.com/deals/yeti-men-s-technical-lightweight-puffer-jacket-1>
<https://morningsave.com/deals/yeti-women-s-technical-lightweight-puffer-jacket-1>

To be clear, YETI requests that A Mediocre Corporation provide all identifying information (seller name and contact information) regarding the source of these products as YETI is actively investigating this matter and evaluating potential legal action.

YETI would like to amicably work with you to resolve this issue, recover all inventory and ensure that there is no further distribution of these unreleased goods. YETI expressly reserves all of its legal rights in this matter.

Sincerely,



Erica Brand Portnoy



Erica Brand Portnoy
Partner

Sideman & Bancroft LLP
One Embarcadero Center
Twenty-Second Floor
San Francisco, CA 94111
Main: 415.392.1960
Direct: 415.733.3953
Fax: 415.392.0827
eportnoy@sideman.com
Visit us at www.sideman.com

Please consider the environment before you print this email.

CONFIDENTIALITY

This e-mail may contain confidential and privileged material for the sole use of the intended recipient(s). Any review, use, distribution or disclosure by others is strictly prohibited. If you are not the intended recipient (or authorized to receive for the recipient), please contact the sender by reply e-mail [or at (415) 392-1960] and delete all copies of this message. It is the recipient's responsibility to scan this e-mail and any attachments for viruses.



One Embarcadero Center, Twenty-Second Floor
San Francisco, California 94111-3711
Telephone: (415) 392-1960
Facsimile: (415) 392-0827

Erica Brand Portnoy
eportnoy@sideman.com
(415) 733-3953

November 21, 2022

VIA E-MAIL

A Mediocre Corporation
copyright@mediocre.com
admin@mediocre.com
legal@mediocre.com

Re: **Request for Cooperation: Unlawfully Procured Product Sold on Morningsave.com**

Dear A Mediocre Corporation:

I am contacting you with an urgent request on behalf of my client YETI Coolers LLC ("YETI"). **Please contact me immediately to discuss this matter.** I can be reached at (415) 283-5764 or eportnoy@sideman.com.

YETI identified that Morningsave.com (operated by A Mediocre Corporation) offered for sale and sold "YETI"-branded products that have been unlawfully procured. Specifically, the "YETI"-branded products listed below have never been sold, and YETI has a good faith belief that the products were stolen or diverted without authorization while in transit.

YETI requests your immediate cooperation in this matter, including taking the following actions:

- Promptly remove all listings, advertising, and offers for the "YETI"-branded listings below;
- Quarantine all of the products that currently remain in Morningsave.com's inventory, including but not limited to outstanding orders, and identify the current quantity on-hand;
- Please contact me immediately to provide the source of where Morningsave.com procured the "YETI" products.

The following listings on Morningsave.com feature "YETI"-branded products that have never been sold:

<https://morningsave.com/deals/yeti-crossroads-16l-tote-bag-17>
<https://morningsave.com/deals/yeti-men-s-technical-lightweight-puffer-jacket-1>
<https://morningsave.com/deals/yeti-women-s-technical-lightweight-puffer-jacket-1>

A Mediocre Corporation
November 21, 2022
Page 2

To be clear, YETI requests that A Mediocre Corporation provide all identifying information (seller name and contact information) regarding the source of these products as YETI is actively investigating this matter and evaluating potential legal action.

YETI would like to amicably work with you to resolve this issue, recover all inventory and ensure that there is no further distribution of these unreleased goods. YETI expressly reserves all of its legal rights in this matter.

Sincerely,

A handwritten signature in blue ink that reads "Erica Brand Portnoy". The signature is written in a cursive, flowing style.

Erica Brand Portnoy

9876-19\5232748v1

Portnoy, Erica Brand

From: Derek Chapin <derek@mercatalyst.com>
Sent: Tuesday, November 22, 2022 7:52 AM
To: Portnoy, Erica Brand
Subject: Mercatalyst (frmr Mediocre) / MorningSave & YETI

Ms. Portnoy,

We are in receipt of your email and are currently investigating the matter.

In the meantime, could you please send us anything YETI has that shows the items were stolen or diverted in transit? This will help expedite our review.

Thank you.

Regards,

Derek Chapin, CEO

Mercatalyst, Inc.

Portnoy, Erica Brand

From: Portnoy, Erica Brand
Sent: Tuesday, November 22, 2022 12:38 PM
To: 'Derek Chapin'
Subject: RE: Mercatalyst (frmr Mediocre) / MorningSave & YETI

Mr. Chapin,

I am in receipt of your email and appreciate Mercatalyst's prompt response to my letter.

I understand from your message that your team is currently investigating this matter. However, YETI requests your immediate cooperation in **removing** the active listings while this matter is investigated by both Mercatalyst and YETI. Specifically, please remove the two listings below for YETI-branded down outerwear:

- <https://morningsave.com/deals/yeti-men-s-technical-lightweight-puffer-jacket-1>
- <https://morningsave.com/deals/yeti-women-s-technical-lightweight-puffer-jacket-1>

YETI is prepared to provide you a declaration under oath that the outerwear depicted in these listings have **never been sold**, and that YETI has a good faith belief that the products were stolen or diverted without authorization while in transit.

As for the third listing noted in my initial letter (<https://morningsave.com/deals/yeti-crossroads-16l-tote-bag-17>), this product has been previously released. At this juncture, without further information regarding Mercatalyst's source of this product, please exclude this product/listing from the current investigation, unless you learn information during the course of your investigation that dictates otherwise.

I am available to discuss this matter with you today, including a financial payment from YETI for your entire inventory of the YETI-branded outerwear. YETI is extremely concerned with the further distribution of these products to the public and with Mercatalyst's continued sale of these items after being informed of the fact that this YETI outerwear has never been released or offered for sale. The continued sale of these items is harmful to YETI and as such YETI requests that you immediately remove the active listings for these items.

I am reiterating my request to speak with you today to amicably resolve this matter. I can be reached at (415)283-5764.

Best regards,
Erica Brand Portnoy

From: Derek Chapin <derek@mercatalyst.com>
Sent: Tuesday, November 22, 2022 7:52 AM
To: Portnoy, Erica Brand <eportnoy@sideman.com>
Subject: Mercatalyst (frmr Mediocre) / MorningSave & YETI

Ms. Portnoy,

We are in receipt of your email and are currently investigating the matter.

In the meantime, could you please send us anything YETI has that shows the items were stolen or diverted in transit? This will help expedite our review.

Thank you.

Regards,

Derek Chapin, CEO

Mercatalyst, Inc.

Portnoy, Erica Brand

From: Robert Radcliff <rradcliff@weinrad.com>
Sent: Wednesday, November 23, 2022 4:27 AM
To: Portnoy, Erica Brand
Subject: Yeti

Erica: Here is my contact information. I am out of the office today but cell is 214.532.9001.

Thanks

Rob

ROBERT K. RADCLIFF
Weinstein Radcliff Pipkin LLP
8350 N. Central Expressway | Suite 1550
Dallas, Texas 75206
P: 214.865.6130 | F: 214.865.6140
rradcliff@weinrad.com | weinrad.com

WEINSTEINRADCLIFF
PIPKIN
ATTORNEYS AT LAW LLP